IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 662 of 2004

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL VISHNUBHAI PRAHLADBHAI

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 662 of 2004

MR AJAY R MEHTA for Petitioner No. 1

MR KP RAVAL ADDL PP for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 10/05/2005

ORAL JUDGEMENT

The present petitioner has filed the present revision application under Section 397 read with Section

401 of the Code of Criminal Procedure challenging the judgement and order dated 2.8.2004 passed by the learned Additional Sessions Judge, Fast Track Court No. 4, Gandhinagar in Criminal Appeal No. 2 of 2004 by which the learned Additional Sessions Judge has dismissed the appeal preferred by the present petitioner and confirmed the judgement and order dated 2.1.2004 passed by the learned JMFC, Second Court, Gandhinagar, wherein, the learned trial Judge has held guilty the present petitioner and other accused for the offence punishable under Section 147 (d) of the Gujarat cooperative Societies Act, 1961 and ordered to pay fine of Rs.500=00 each and default of fine, SI for one month.

2. In brief, it is the case of the prosecution that one Shri M.H. Patel, working as a Head Clerk in the office of the Registrar, Cooperative Societies, Ahmedabad lodged a complaint on 9.6.1997 before the Pethapur Police Station alleging that the original accused Nos. 1 to 3 and the petitioner had jointly and severally, in connivance with each other deposited an amount of Rs.15 lacs on 26.8.1996 with C.R.B. Capital Markets Ltd., without obtaining prior permission of the Registrar, Cooperative Societies and thereby they have contravened Section 147 (d) of the Gujarat Cooperative Societies Act, 1961. On the basis of the aforesaid complaint, after investigation, charge sheet came to be filed against all the accused persons which was registered as Criminal Case No. 10043 of 1997 in the Court of Judicial Magistrate First Class, Gandhinagar and after recording evidence, learned JMFC, Gandhinagar held guilty the present petitioner and other accused as mentioned above. Against the said judgement and order of the learned JMFC, Gandhinagar, the present petitioner preferred an appeal before the learned Additional Sessions Judge, Gandhinagar and after hearing both the parties and taking into consideration the material on record, learned Additional Sessions Judge dismissed the appeal vide judgement and order dated 2.8.2004 and against the said judgement and order, present revision application is preferred by the present petitioner.

3. Heard Mr. Ajay Mehta, learned advocate for the petitioner. During hearing he has taken me through the judgement and order under challenge and the documents attached with the memo of revision application. Mr. Mehta has submitted that admittedly the complaint is filed after the period of six months. He has also submitted that as transpires from the record that Manager has not played any role or gave any kind of advance to CRB Capital to invest money in the CRB Capital. He has

also submitted that both the courts below have committed error in appreciating the evidence produced before it and prayed that the present revision application deserves to be allowed.

4. I have gone through the judgement under challenge and the documents attached with this revision application. It is an admitted fact the complaint was lodged on June 10, 1997 and the resolutions in question were dated August 24, 1996 and September 2, 1996 i.e. the complaint is lodged after 6 months and so prima-facie complaint is time barred. The punishment prescribed for the offence with which petitioner and others have been charged is only fine of Rs.500-00 and considering the provisions of Section 468 of the Code of Criminal Procedure, such complaint can be lodged within six months from the date of commission of crime and, therefore, this complaint is time barred and the same is required to be quashed. The lower court has not properly considered the said aspect and wrongly held that complaint is filed within the period of limitation. From the record, it transpires that it is within the knowledge of Registrar, Cooperative Society or complainant that when accused has deposited the amount in CRB Capital. In the deposition of PW-1 Mangalbhai, who was the then Registrar in Randheja Commercial Co-op Bank Ltd., he has stated that petitioner Bank Manager had placed the deposits with CRB. From his deposition it is clear that it is within the knowledge of Registrar, Cooperative Societies that accused has invested Rs. 15,79,397/- with CRB Capital and so, prima-facie complaint is lodged after 6 months from the date of committing crime, which is time barred. It also transpires from the record that from 23rd August, 1996 to 27th August, 1996, the present petitioner (Manager of the Bank) was on leave and Board of Directors of the Bank have passed resolution on 26th July, 1996 to invest the above money in the CRB Capital. The Manager has not played any role in investing the said amount in CRB Capital and in pursuance of the Resolution passed by the Board of Directors of the Bank, the present petitioner invested the said amount in CRB Capital and so, Manager is not liable for the act committed by the Board of Directors of the Bank. I am of the view that both the courts below have committed error and not appreciated the evidence produced before it and the present revision application deserves to be allowed.

5. For the foregoing reasons, the present revision application is allowed. The judgement and order passed by the learned Additional Sessions Judge. Gandhinagar dated 2.8.2004 in Criminal Appeal No. 2 of 2004 and

judgement and order passed by the learned JMFC, Gandhinagar in Criminal Case No. 10043 of 1997 is hereby quashed. Rule is made absolute.

(M.D. Shah, J.)
pallav